

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

KEVIN BRIAN MITCHELL,

Plaintiff,

Case No. 15-CV-1520

v.

MARK RICHTER, *et al.*,

Defendants.

NURSE DEFENDANTS' RENEWED MOTION FOR ATTORNEY'S FEES

Defendants Tracy Lund, Lisa Korslin, Nicholas Larkin, and Brenda Lemberger (hereinafter the "Nurse Defendants"), by their attorneys, hereby file this *Renewed Motion for Attorney's Fees* pursuant to Fed. R. Civ. P. 54(d)(2), 42 U.S.C. § 1988(b), and 28 U.S.C. § 1927.

MOTION FOR ATTORNEY'S FEES

The Nurse Defendants request an award of attorney's fees against Plaintiff Kevin Brian Mitchell in the amount of **\$19,172.00** and costs and expenses as provided in their separately filed *Bill of Costs* (Dkt. 161) (seeking \$243.58.00 in taxable costs). These numbers represent the amount incurred in the defense of this case through May 2, 2017. The Nurse Defendants reserve the right to submit a supplemental motion for any later fees or costs.

Mitchell filed this 42 U.S.C. § 1983 civil rights action against several correctional officers and healthcare professionals employed at the Sheboygan County Detention Center. (*See* Compl., Dkt. 1). He claimed that a correctional officer (Mark Richter) used excessive force against him in August 2015 and that the other defendants were deliberately indifferent to his resulting injuries. (*Id.*). The Court screened Mitchell's complaint on April 11, 2016 and permitted him to proceed based on the "facts" as he warranted them. (*Order*, Dkt. 14).

The case proceeded through discovery and to dispositive motions, with each party filing for summary judgment. On February 27, 2017, the Court denied Mitchell's motion and granted each defendants'. (Dkt. 157). The Court, in that decision, recognized that Mitchell's "claims in this action are factually frivolous" and "[d]espite surviving to the summary judgment stage, the evidence presented here shows that Mitchell never had any viable claims; they only appeared to be so because he manufactured them that way." (*Id.* at p. 30). Your Honor also noted that Mitchell "has wasted the time of the Court and the funds of the taxpayer in litigating what appears to have been only a vendetta against Richter." (*Id.*). Having found Mitchell's claims to be frivolous, the Court issued a "strike" against him pursuant to 28 U.S.C. § 1915(g). (*Id.*).

The Nurse Defendants now ask the Court to award reasonable attorney's fees in an amount it determines to be reasonable—considering the timekeeper information included in the Wiesner Declaration (Ex. A) and Dkt. 172-2 and the aggravating circumstance that the defendants were required to contribute considerable time

briefing dispositive motions and fully preparing the case for trial. Attorney's fees are collectible by the defense in this case pursuant to 28 U.S.C. § 1927, which permits courts to order the payment of excess costs, expenses, and attorney's fees incurred by a party due to an adversary's unreasonable and vexatious conduct that unduly prolongs an action. The Court's summary judgment decision evidences the reason for an award under § 1927, i.e., its finding that Mitchell's lawsuit was frivolous.

Leib Knott Gaynor's defense rates are \$195.00/hour for a partner; \$160.00/hour for an associate attorney; and \$90.00/hour for a paralegal. (Wiesner Decl., Ex. A; see Dkt. 172-2). An itemization—broken down by timekeeper—is provided for the staff who defended this lawsuit: Attorneys Ryan M. Wiesner (associate) and Douglas S. Knott (partner) and paralegal Stephanie M. Wolfgang. (Wiesner Decl. Ex. A: Dkt. 172-2). That itemization shows the attorney's fees attributed to the defense of this case for the Nurse Defendants totals **\$19,172.00.00** through May 2, 2017, after internal firm adjustment. (*Id.* at p. 6).¹

The Nurse Defendants rely on the declaration of Peter Jennetten (Dkt. 172) to support their motion for attorney's fees. Peter Jennetten is an attorney who supervises litigation nationwide for Advanced Correctional Healthcare, Inc.—the entity that employed Defendant Dr. Karen Butler and the Nurse Defendants. Atty. Jennetten has attested to the reasonableness of LKG and Bell Moore Richter's hourly rates and that they represent the market rates for Wisconsin defense counsel assigned to

¹ Please note that the increase in this total amount compared to the Nurse Defendants' last motion for attorney's fees (seeking approximately \$14,000.00) is due to them running only a partial itemization of defense costs for their last motion. This \$19,172.00 represents the total defense costs from the date LKG opened its file through May 2, 2017. (Wiesner Decl.; Dkt. 172-2).

defending correctional medicine providers in federal civil rights litigation. (Dkt. 172, ¶¶ 1-3, 7).

Dated this 4th day of May, 2017.

LEIB KNOTT GAYNOR LLC

By: s/ Ryan Wiesner

Douglas S. Knott, SBN 1001500

Ryan M. Wiesner, SBN 1090647

Attorneys for Defendants Tracy Lund, Lisa
Korslin, Nicholas Larkin and Brenda Lem-
berger

219 N. Milwaukee Street, Suite 710

Milwaukee, WI 53202

Telephone: (414) 276-2102

Fax (414) 276-2140

Email dknott@lkglaw.net

rwiesner@lkglaw.net